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No. 645

Under - Supreme Court, U.
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Supreme Court of the United States.

October Term, 1945.

Aldred Investment Trust et al.,
Petitioners,

v.

Securities and Exchange Commission,
Respondent.

PETITION FOR WRIT OF CERTIORARI and BRIEF IN SUPPORT THEREOF.

HUGH D. McLELLAN,
Attorney for Petitioners.

Of counsel:

WILLIAM J. HESION.



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Supreme Court of the United States.

OCTOBER TERM, 1945.

ALDRED INVESTMENT TRUST AND GORDON B.
HANLON, ROBERT P. LORING, ELTON N. HAN-
LON, W. EDWARD HIGBEE, JOHN L. ARNOLD and
MALCOLM M. BOWEN, individually and as trustees
and officers of ALDRED INVESTMENT TRUST, AND EZRA
D. HART, as trustee of ALDRED INVESTMENT TRUST,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Chief Justice of the United States and
Associate Justices of the Supreme Court of the United
States:*

Your petitioners, Aldred Investment Trust and Gordon B. Hanlon as president of Aldred Investment Trust, John L. Arnold as treasurer of Aldred Investment Trust, and Robert P. Loring, Elton N. Hanlon, W. Edward Higbee, Malcolm M. Bowen and Ezra D. Hart, all five as trustees of Aldred Investment Trust, and Gordon B. Hanlon, Robert

P. Loring, Elton N. Hanlon, W. Edward Higbee, John L. Arnold and Malcolm M. Bowen, as individuals, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered on September 17, 1945, affirming the judgment of the District Court of the United States for the District of Massachusetts entered on January 19, 1945, as amended by order dated January 31, 1945, which permanently enjoined the petitioners Gordon B. Hanlon, Robert P. Loring, Elton N. Hanlon, W. Edward Higbee, John L. Arnold and Malcolm M. Bowen from serving or acting in the capacity of trustee or as an officer of Aldred Investment Trust and which appointed receivers for Aldred Investment Trust under the Investment Company Act.

Opinions Below.

The opinion of the District Court is reported in 58 F. Supp. 724. The opinion of the Circuit Court of Appeals has not been reported. It appears on pages 1101 to 1116 of the Record.

Jurisdiction.

The Circuit Court of Appeals entered its judgment on September 17, 1945, pursuant to an opinion rendered on the same day. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. Sec. 347 (a)).

Statute Involved.

The statute involved is the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. Sec. 80(a)).

Summary and Short Statement of the Matter Involved.

This is an action brought by the Securities and Exchange Commission under the provisions of the Investment Company Act of 1940 seeking to have the individual defendants adjudged guilty of gross misconduct and gross abuse of trust and further seeking the appointment of a receiver for the Trust. Aldred Investment Trust was established by an agreement and declaration of trust dated November 7, 1927. The legal title, complete management and the absolute control of the trust estate vested in the trustees, being five in number (Record, 37). The Trust issued \$10,000,000 face amount 4½% debentures maturing December 1, 1967. Attached to each debenture was one common share for each \$100 principal amount of the debenture. The Trust also issued 112,500 common shares not attached to any debentures. Prior to 1941 the Trust acquired and retired \$4,100,000 face amount of debentures, leaving outstanding 59,000 shares attached to debentures and 112,500 unattached common shares. On or about October, 1941, Gordon B. Hanlon, one of the defendants, acquired by purchase 110,000 unattached shares of the Trust, the total amount of shares then outstanding being 171,500 shares. The individual defendants were officers or trustees of the Trust, all of whom became such after the acquisition of the shares by the said Hanlon.

The case was tried before Sweeney, J. On January 19, 1945, he filed an opinion stating that all of the individual defendants except Ezra D. Hart were guilty of gross abuse of trust and granting the plaintiff's prayer for the appointment of a receiver and saying: "and such receiver will be appointed with the power either to reorganize the capital structure of the Trust or liquidate the Trust and distribute the assets to such creditors, debenture-

holders, and shareholders of the Trust as may be entitled thereto." At no time prior to the opinion or the entry of the judgment hereafter referred to had there been any default entitling any person in interest to a termination or modification of the Trust by liquidation or otherwise. Nor were the holders of the Trust's shareholders' debentures or its other shareholders made parties to or notified of the action.

The judgment of the District Court was also entered January 19, 1945. The judgment, after reciting that the individual defendants except Hart (who remained free to function as trustee) were guilty of gross abuse of trust within the meaning of Section 36 of the Investment Company Act of 1940, and after reciting that the appointment of receivers is necessary to prevent further abuses, enjoined all the individual defendants except Hart from acting in the capacity of trustee or as an officer of the Trust and appointed two receivers with power "to operate the property and business of the defendant Trust in the manner best calculated * * * to protect the business and property and goodwill and value of the rights of the defendant Trust and to prevent the sacrifice thereof." The judgment also required the trustees (including Hart, who was not found guilty of any breach of trust) to turn over all the trust property to the receivers and the Court reserved the right to make such further orders as it might thereafter deem appropriate or proper. An appeal from this judgment was taken February 17, 1945, in behalf of the Trust by all its trustees, its president, its treasurer, and by all the individual defendants except Hart. The Circuit Court of Appeals affirmed the judgment of the District Court.

Questions Presented.

Two principal questions are now presented for consideration:

— (a) Whether as to each of the individual defendants permanently enjoined from acting as trustee or officer of Aldred Investment Trust the evidence warrants a finding that he has been guilty of gross abuse of trust within the meaning of Section 36 of the Investment Company Act.

(b) Whether as to Aldred Investment Trust the judgment appointing receivers is warranted. This question depends in part on whether the Securities and Exchange Commission has the right under the Investment Company Act to seek the appointment of receivers and whether the Court has the right to grant such relief in a case such as this.

Reasons for Granting the Writ.

(1) The decision of the Circuit Court of Appeals involves important questions of Federal law which have not been, but should be, settled by this Court. A determination of these issues by this Court appears to be important for the future proper administration of the Investment Company Act.

(2) The decision of the Circuit Court of Appeals to the effect that the trustees (except Hart) and the officers of the Trust were guilty of gross abuse of trust within the meaning of Section 36 of the Investment Company Act is supported by no evidence and is contrary to the evidence.

(3) Because of the far-reaching effects of the decision of the Circuit Court of Appeals as to what constitutes gross abuse of trust under Section 36 of the Investment Com-

pany Act, it is respectfully submitted that this Court should determine whether that decision should be allowed to become the law of the land.

(4) The appointment of receivers for an investment trust on the complaint of the Securities and Exchange Commission where no authority to appoint receivers was granted by the Congress raises an important question which should be resolved by this Court.

(5) The decision of the issues in this case are matters of public importance to the officers and trustees of all investment trusts required to be registered under the Investment Company Act and to the investing public.

(6) The appointment of receivers for an investment trust without the security holders thereof being made a party thereto raises an important question as to all such security holders.

(7) The decision of the Circuit Court of Appeals is seemingly in substantial conflict in principle with the decision of the Second Circuit in the case of *Securities and Exchange Commission v. Long Island Lighting Company*, 148 F. (2d) 252.

(8) The appointment of receivers for an investment trust not in default on any of its obligations as a step in the lower Court's proposed liquidation or reorganization of the Trust calls, we beg to submit, for an exercise of the reviewing powers of this Court.

(9) The appointment of receivers on the sole application of the Securities and Exchange Commission and without making the Trust's debenture shareholders or other shareholders parties to the action and without notice to them deprived them and the Trust of property without due process of law. (*New Orleans Debenture Redemption Company v. Louisiana*, 180 U.S. 320.)

Wherefore your petitioners respectfully pray that this petition for a writ of certiorari be granted.

HUGH D. McLELLAN,
Attorney for Petitioners.

Of Counsel:

WILLIAM J. HESSION.